787

Mr Justice Catron

Maps.

SUPREME COURT OF THE UNITED STATES.

No. ~~303.~~ 190. 124.

THE UNITED STATES, APPELLANTS,

vs.

JOSE ANTONIO AGUIRRE AND WIFE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twenty-third of March, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and [settle] the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Jose Antonio Aguirre, for the place named , was presented, and ordered to be filed and docketed with No. 116, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Oct.* 14, 1852.

In case No. 116, José Antonio Aguirre, in right of his for the surplus lands of the place named San Jacinto Viejo, the deposition of Santiago Arguello, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H. H., Nos. 1 and 2, annexed thereto, was filed.

(Vide page 5 of this transcript.)

LOS ANGELES, *Nov.* 15, 1852.

In the same case the deposition of Ignacio del Valle, a witness in behalf of the claimant, taken before Commissioners Hiland Hall, was filed.

(Vide page 7 of this transcript.)

2 SAN FRANCISCO, *September* 16, 1853.

Case No. 116 called. The counsel for the claimant read the evidence. Argued, submitted, and taken under advisement.

SAN FRANCISCO, *Jan'y* 17, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board respecting the claim.

(Vide page 24 of this transcript.)

3 *Petition.*

To the hon. the U. S. commissioners to ascertain and settle private land claims in the State of California:

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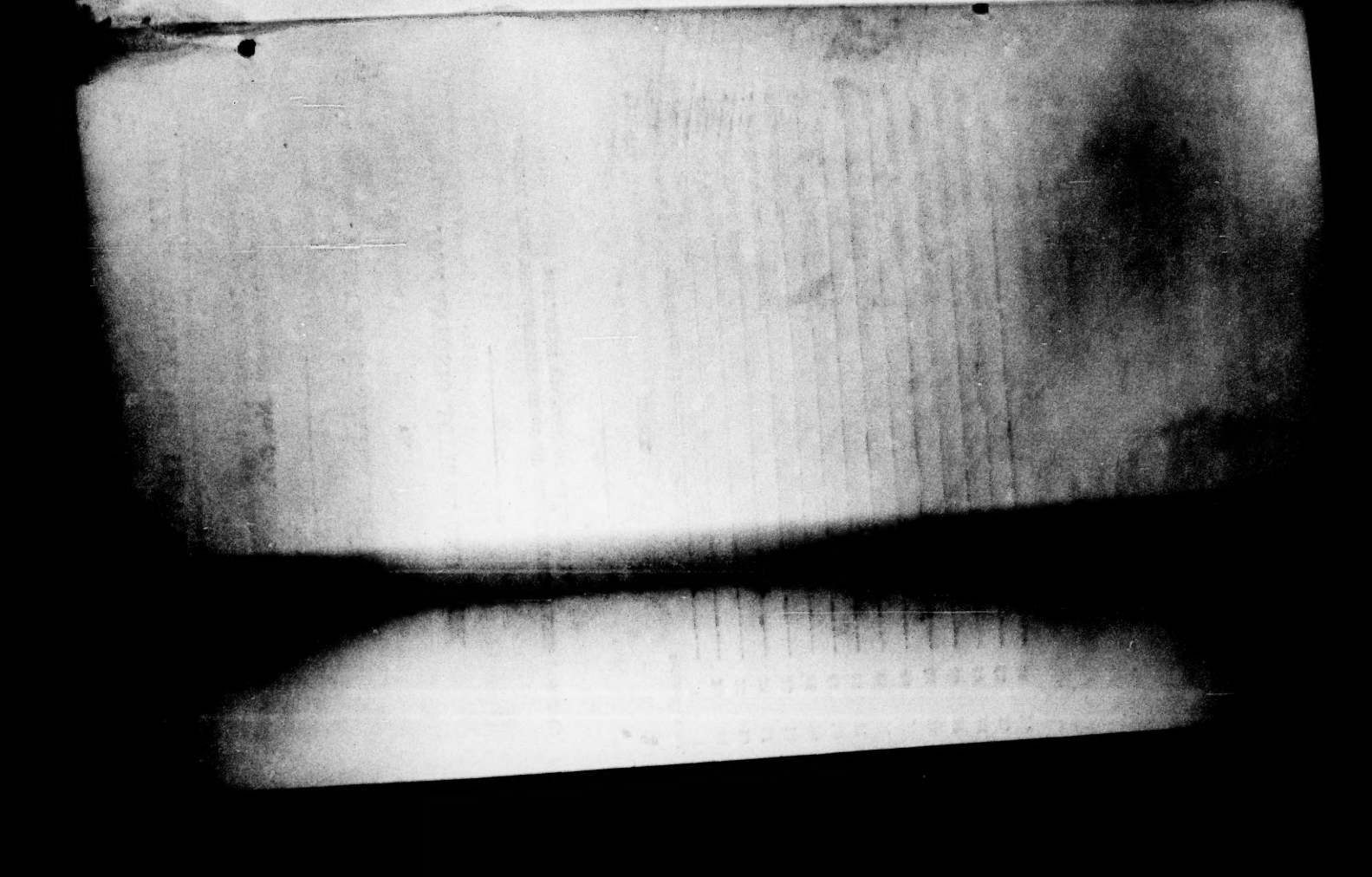

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3 *Petition.*

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The petition of Jose Antonio Aguirre, a resident of the county of San Diego, in the State of California, respectfully represents: That

his wife, Maria Rosaria de Estudillo de Aguirre, is the grantee and present owner and occupant of the sobrante of the rancho of San Jacinto Viejo y Nuevo to the extent of five sitios de ganado mayor, more or less, situate in the county of San Diego, in said State, bounded as follows, viz: on the north by the ranchos Jurusa and Bernardino, on south by the rancho of Temecula, on the west by the rancho of Anapia, and on the east by the rancho of Gorgonia.

Your petitioner further represents, that the said "sobrante" of the rancho of San Jacinto as aforesaid, was granted to his said wife (whom he represents in this application) by Pio Pico, governor of California, by a decree, dated Angeles, May 9th, 1846, in conformity with the law of August 18th, 1824, and the regulations of Nov. 21st, 1828; and by a second decree, dated May the 10th 1846, subject to the approval of the departmental assembly.

That on the 28th of May, 1846, the said grant was approved by the committee on vacant lands, and that subsequently, on the 3d of June, 1846, the departmental assembly approved both said grants; all of which will more fully appear by reference to a certified copy of the espediente by the U. S. surveyor general of California, which is filed herewith.

Your petitioner further represents, that the said grantee has
4 complied with all the requirements of said law and regulations.

That she has ever since remained, and now is, in possession of said property, and is not aware of the existence of any conflicting claim; all of which he is prepared to prove on the trial of this cause.

Wherefore petitioner prays your honorable board for confirmation of his wife's title to the land as aforesaid.

And as in duty, &c., &c.

SUTHERLAND & CARR,
Atty's for petitioner.

Filed in office March 23d, 1852.

GEO. FISHER, *Sec'y.*

5 *Deposition of Santiago Arguello.*

LOS ANGELES, *October* 14, 1852.

On this day, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Santiago Arguello, a witness produced in behalf of Doña Rosaria E. Aguirre, wife of Jose Antonio Aguirre, the claimant of the rancho of San Jacinto Nuevo y Viejo, which is No. 116 on the docket of said commissioners, who, being duly sworn, testified as follows:

The associate law agent was notified, and attended.

Question 1st. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; I am sixty years of age, and reside near the boundary line between the State of California, and Lower California, in Mexico; the rancho of Si Juan, upon which I reside, being divided by said line.

Question second. Do you know the handwriting of Pio Pico and Jose Matias Moreno?

Answer. I do, very well.

Question third. Look at the document marked No. 1, H. H., and now shown you, and filed herewith as a part of this deposition, purporting to be a grant of the rancho of San Jacinto Viejo y Nuevo, and say whether the signatures of Pio Pico as governor, and Jose Maria Moreno as secretary, are in their proper handwriting, and genuine.

6 Answer. They are both genuine signatures. I have been associated with both gentlemen in public affairs, and know them very well.

Question fourth. Look at the document now shown you, purporting to be an act of approval of the departmental assembly of California, marked No. 2, H. H., and filed herewith as part of this deposition, and say whether the signatures of Pio Pico and Jose Matias Moreno are genuine.

Answer. The document and signatures are both genuine.

S. ARGUELLO.

Sworn to and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 14th, 1852.

GEO. FISHER, *Sec'y.*

7 *Deposition of Ygnacio del Valle.*

LOS ANGELES, *Nov.* 15, 1852.

On this day, before Com'r Hiland Hall, came Ygnacio del Valle, a witness in behalf of the claimant, Jose Antonio Aguirre, petition No 116, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant, the witness testified as follows:

My name is Ignacio del Valle; my age is forty-four years; and I reside in Los Angeles.

I know the ranchos de San Jacinto Viejo y Nuevo, situated in the county of San Diego.

The first rancho, known as Jacinto, belonged, I think, to Jose Antonio Aguirre and Jose Antonio Estudillo, and the other rancho to the wife of Aguirre, who was a daughter of Estudillo.

In the year 1844, Aguirre received from my rancho nine hundred head of cattle, which he placed on the said ranchos. In 1847 I was upon their rancho, and brought away four thousand head of cattle, on account of the want of pasture.

There is no cultivation, as the land is unfit for it. From that time the land was unoccupied, from the hostility of the Indians, until the present year, when it is reoccupied.

YGNACIO DEL VALLE.

Sworn and subscribed before me.

HILAND HALL. *Com'r.*

Filed in office Nov. 15th, 1852.

GEO. FISHER. *Sec'y.*

9 *B.—Expediente.*

1846.

Espediente promovido por la Señora Doña Maria del Rosaria Estudillo de Aguirre, en pretention de un terreno, en los ranchos de San Jacinto Viejo y Nuevo. (512.)

10 *S'or Sub-prefecto del partido de S. Diego:*

S. DIEGO *Feb'ro* 19, 1846. Pa presentado y admitida la presente instancia en cuanto a lugar a derecho, elevese al conocimiento del Sup'or Gobierno Departamental con el informe respectivo.

ARGUELLO.

Jose Ant'o Aguirre, casado con Doña M'a del Rosario Estudillo á nombre de esta y como para propriedad ql. esclusivamente le pertenezca, ante V. hace presente, ql. habiendo quidado un sobrante en la concesion hecha del rancho de San Jacinto, y necesitiando la espresada S'ra de dho. resto pa establecer en el, bienes raices y semovientes, pretende por el conducto de V. se sirva elevar la presente al Ex'mo S'r Gob'r á fin de obtener el terreno mencionado y cuyor estencion es como do cinco leguas poco mas o menos, dentro de los limitus del conocido rancho de San Jacinto cuyo diseño gral. está en la S'ria de Gob'o y manifiesta en su estencion total, ser colindantes los ranchos Jurupa y San Bernardino acia al Norte, Temecula por al sur, Huapia por el Oeste, y Sn. Gorgonio al Esto; por lo que previos los informes ql. V. estime convenientes.

A. V. pido y suplico á nombre y propriedad de la espresada S'ra eleve la presente al Sup. Gober. esperando ql. S. E acseda á esta solicitud; jurando no ser de malicia y lo necesario, &c. pormitiendose el uso del papel comun pr. falta del sellado en el lugar.

S. Diego, 19 de Febr'o de 1846

JOSE ANTONIO AGUIRRE.

EX'MO SENR:

El terreno ql. solicita D. Jose A. Aguirre á nombre de su esposa
11 es lo restante ql. a quedado valdio de los terrenos de San Jacinto Viejo y Nuevo, y ql. colinda con los terrenos espresados en solicitud, y demuestra la copia del diseño ql. tengo a la vista, del original ql. existe en el Gobierno pr. lo que no apareciendo ser propriedad agena la parte sobrante ql. se pretenda y amas la confirmidad que han manifestado los agraciados Don Jose Ant'o Estudillo y Don Miguel de Pedrorena, aparece ql. no resulta obstaculo á esta concesion; sin embargo de lo espuesto V. E. con mejor asierto resolverá lo ql. fuere de su superior agrado.

San Diego, Febr'o 19 de 1846.

S. ARGUELLO.

ANGELES, *Mayo* 9 *de* 1846.

Vista la solicitud con queda principio este espediente el informe del sub-Prefecto de San Diego, con lo demas que se tubo-Presente y ser convino de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828, declaro á Da. Maria del Rosario Estudillo de Aguirre, dueña, en propriedad del terreno sobrante en San Jacinto Viejo y Nuevo conforme demuestra el diseño general que obra en los anto dichos. Librese á la agraciada el titulo respectivo y reservese el espediente para sometulo á la aprobacion de la Exta. Asamblea Pio Pico, gobernador constitucional de este Departamento de Californias así lomando decreto y firmo, de q. doy feé.

PIO PICO.

JOSE MATIAS MORENO, *Srio.*

Pio Pico, gobernador constitucional del departamento de Californias:

Por cuanto Don Jose Antonio Aguirre á nombre de su es posa Da. Maria del Rosario Estudillo ha pretendido para su beneficio personal y el de su familia, el terreno sobrante que resulta en el Rancho de San Jacinto Viejo y Nuevo, practicados previamente la averiguaciones concernientes, usando de los facultades que mi son conferidas, á nombre de la nacion Mejicano, ha venido por decreto de esta dia en concederle á Doña Maria del Rosario Estudillo de Aguirre el espresado terreno, de darandole la propiedad de el por los presentes letras de conformidad con la ley de 18 de Agosto de 1824 y 12 reglamento de 21 de Noviembre de 1828, á resuva de la aprobacion de la Exma. Asamblea Departamental y bajo los condiciones siguientes:

1°. Podra cucarlo sin perpedicar los travesias, caminos y servidumbres lo disfrutara libro y esclusivamente pero lo tendra ocupado con casa habitada y bienes semovientes á fin de evitar el denuncio.

2°. Solicitara del Juez respectivo le de la posecion juridica en virtud de este despacho, por el cual si demarcaran los linderos con los majoneras necesarios.

3°. El terreno de que se le hace donacion es el que resulta sobrante en los Rancho de San Jacinto Viejo y Nuevo, como lo demuestra el diseño gral. de ambos Ranchos que obra en sus espedientes. El Juez que dien la posecion lo hara medir comforme á ordenanza empesando los mediciones desde los linderos de Don Jose Anto. Estudillo y de Don Miguel de Pedrorena y dara aviso á Este Gobierno del numero de sitios de ganado mayor que contiene.

En consecuencia mando que teneiendose el presente titulo por firmo y validero, se tome razon de el en el libro á que corresponde y se entregue á la interesada para su resguardo y demas fines.

Dado en la ciudad de Los Angeles en este papel comun por no haber sallado á los q. dias de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.

JOSE MATIAS MORENO, *Srio.*

ANGELES, *Mayo* 8 *de* 1846.

Dado cuenta en sescion de hoy con este espediente à la Exma. Asamblea Departamental, se mando pasar à la comision de terrenos valdios.

AGUSTIN OLVERA.

SEÑOR: La comision de terrenos valdios à examinado el presente espedte. promodvido por D. Josè A. Aguirre à nombre de su esposa Da. Rosario Estudillo, retalivo al parage sobrante de San Jacinto Nuevo y Viejo ql. le fué concedido con arreglo à los leyes de la materia pa. el Supr. Gobo. Departamte. en este con cepto
13 pone à la deliberacion de V. E. la proposicion siguiente.

Se apruiba la concesion hecha à Da. Rosaria Estudillo de Aguirre del terreno ql. resulta sobrante en los Ranchos de S. Jacinto Viejo y Nuevo, jurisdiccion de San Diego segun titulo librado confha. 2 de Mayo del presente año, y con aneglo à la ley de 18 Agosto de 1824 y al arto. 5o. del reglamento de 21 Nobre. de 1828.

Sala de Comisciones en la Ciudad de Los Angeles, Mayo 28 de 1846.

S. ARGUELLO.

ANGELES, *Junio* 3 de 1846.

En sescion de este dia aprobo la Exam. Asamblea Departamental la proposicion del dictaman anterior.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, do hereby certify that the eight preceding and hereunto annexed pages of tracing paper, numbered from one to eight inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this eighth day of March, A. D. 1852.

SAM'L D. KING,
Surveyor General, Cal.

Filed in office March 23, 1852.

GEO. FISHER, *Sec'y.*

15 *C.—Translation of espediente.*

[1846.]

Espediente presented by the Señora Doña Maria del Rosaria Estudillo de Aguirre, soliciting a tract in the ranchos of Old and New San Jacinto.

512

Señor Sub-Prefect of the District of San Diego:

SAN DIEGO, *Feb.* 19, 1846. Let the present petition be presented and admitted so far as it is in conformity with the laws. Let it be submitted to the cognizance of the supr. department. govt. with the respective report.

ARGUELLO.

I, Jose Antonio Aguirre, married to Dona Maria del Rosaria Estudillo, in her name and for the property which exclusively belongs to her, present myself before your honor and say, that there having remained a surplus (sobrante) in the concession made of the rancho of S. Jacinto, and the said Señora requiring the said remnant of land to establish thereupon real and personal property, solicits that by means of your honor, if it shall so please, these presents might reach his excellency the señor governor, in order to obtain the mentioned land, the extent of which is about five leagues, more or less, within the limits of the known rancho of San Jacinto, the general plat of which is in the office of the secretary of state, and shown in its total extent that it is bounded thus: north by the ranchos Jurupa and San Bernardino, south by Temecula, west by Unapia, and east by Gorgonia.

Your honor will also cause previous observations to be
16 taken. I beg to ask of your honor, in the name and in behalf of the property of the abovementioned Señora, to see that these presents reach the superior government, hoping that your excellency will accede to this demand, swearing that it is not made in malice, but necessary, &c., and that you will permit the use of common paper, for want of that which is sealed in its place.

San Diego, 19th of January, 1846.

JOSE ANTONIO AGUIRRE.

MOST EXCELLENT SIR: The land petitioned for by D. Jose A. Aguirre, in the name of his wife, is that remaining vacant from the land of the Old and New San Jacinto, and which is bounded by the lands mentioned in the petition; and the copy of the plat, which I have under my eyes, proves to be correct with the original which exists in the government. Inasmuch as it does not appear to be strange property, that which is claimed as part overplus, and never to have been the same declared by the solicitants, D. Jose Antonio Estudillo and Don Miguel de Pedrorena, it seems to me that there can result no obstacle to this concession. Notwithstanding that which is represented, your excellency, with more prudence, will resolve upon that which becomes its superior will.

San Diego, February 19, 1846. S. ARGUELLO.

ANGELES, *May* 9, 1846.

Having seen the petition with which commences this espediente, the report of the sub-prefect of San Diego, with the rest that
17 has been reported, and finding the whole in conformity with the laws of the 18th of August, 1824, and regulation of the 21st of November, 1828, I declare to Da. Maria del Rosario Estudillo de Aguirre the property in fee of the land remaining in Old and New

San Jacinto, conformably as shows the general map, which agrees with all the antecedents. Let the respective title be delivered to the claimant, and let this espediente be reserved to submit to the approbation of the most excellent assembly. Pio Pico, governor constitucional of this department of the Californias, thus ordered, decreed, and signed that which I certify to. PIO PICO.

JOSE MATIAS MORENO, *Sec'y.*

Pio Pico, governor constitutional of the department of the Californias:

Inasmuch as Don Jose Antonio Aguirre, in the name of his wife, Doña Maria del Rosario Estudillo, has solicited for her personal benefit and that of her family, the overplus land resulting from the rancho of Old and New San Jacinto, concerning which the investigations being previously made, using the powers conferred upon me in the name of the Mexican nation, I have decreed this day that it be conceded to her, Doña Maria del Rosario Estudillo de Aguirre, the mentioned land, declaring to her the property of the same in fee by these present despatches, in conformity with the law of the 18th of August, 1824, and regulations of the 21st of November, 1828, referring
18 it to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. She may enclose it without injuring the crossings, roads, and servitudes; she may enjoy it freely and exclusively, but she must occupy it with an inhabited house and movable property, so as to avoid its denouncement.

2d. She shall solicit the respective judge to give her juridical possession in virtue of this decree, thereby establishing the boundaries with the necessary landmarks.

3d. The land, of which donation is made to her, is that which remains as overplus in the ranchos of Old and New San Jacinto, as will appear by the general map of both ranchos, and which corresponds with their espedientes.

The magistrate who shall give the possession shall have it surveyed conformably to the ordinanza, commencing the surveys from the boundaries of Jose Antonio Estudillo and of Don Miguel de Pedrorena, and he will advise the government of the number of (sitos de ganado mayor) square leagues it contains.

In consequence thereof I order that, considering the present title as firm and valid, note be made of it in the corresponding book, and be delivered to the interested person for her own security and other purposes.

Given in the city of Los Angeles, on this common paper, on the 9th day of the month May, 1846.

(Signed) PIO PICO.

(Signed) JOSE MATIAS MORENO, *Sec'y.*

19 LOS ANGELES, *May* 8, 1846.

Report of this expediente having been made to the most excellent departmental assembly in its session of to-day, I ordered it to be referred to the commission on vacant lands.

AGUSTIN OLVERA.

SENOR: The commission on vacant lands have examined the present espediente, presented by D. Jose A. Aguirre in the name of his wife, Dñ. Rosaria Estudillo, in relation to the tract remaining as overplus (sobrante) from New and Old S. Jacinto, which was conceded to him in conformity with the laws on the subject-matter by the superior departmental government in this favorable light, I submitted the following proposition to the arbitration of your hon. board:

The concession made to Doña Rosaria Estudillo de Aguirre of the tract which remains as overplus (sobrante) from the ranchos of Old and New San Jacinto, in the jurisdiction of San Diego, according to submitted title, is approved of on this 2d of May of the present year, in conformity with the law of the 18th of August, 1824, and of the 5th article of the regulation of November 21st, 1828.

Hall of the commissioners in the city of Los Angeles, May 28th, 1846.

(Signed) S. ARGUELLO.

20 ANGELES, *June* 3, 1846.

In the session of this day the most excellent departmental assembly approves the proposition of the foregoing decree.

Filed in office November 13th, 1852.

GEO. FISHER, *Sec'y.*

21 *Document H. H., No.* 1, *annexed to the deposition of Santiago Arguello.*

Pio Pico, Gobernador Constitucional del Departamento de Californias:

{ Gov. del dept. de Californias. } Por cuanto Don Jose Antonio Aguirre, à nombre de su esposa Don Maria del Rosario Estudillo ha pretendido para su beneficio personal y el de su familia el terreno sobrante ql. resulta en el Rancho de San Jacinto Viejo y Nuevo; practicadas previamente las avinguaciones concernientes, usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido por decreto de este dia en concederle à Doña Maria del Rosario Estudillo de Aguirre le espresado terreno declarandole la propiedad de el por las presentes letras de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre 1828 à reserva de la aprobacion de la Exma. Asamblea Departamental y bajo las condiciones siguientes:

1a. Podra circarlo sin perjudicar las travasias caminos y servidumbres lo disfrutarà libre y esclusivamente pero lo tendrá ocupado con casa habitada y bienes semoviente a fin de evitar el denuncio.

2a. Solicitarà del Juez respectivo le de la posecion juridica en virtud de esto despacho por el cual se demarcaran los linderos con la majoneras necesarias.

3a. El terreno de que se hace donacion es el que resulta sobrante en los Ranchos de San Jacinto Viejo y Nuevo, como lo demuestra el diseño general de ambos ranchos que obra en sus espediente.

El Juez que diere la posecion la hará medir conforme á ordenanza Empezando los mediciones desde los linderos de Don Jose Antonio Estudillo y de Don Miguel de Pedrorena, y dará aviso á esto Gobierno del numero de sitios de ganado mayor que contiene.

En consecuencia mando que teniendose el presente titulo por firme y valedero, se tomo razon de el en el libro á que corresponde y se entrigue á la interesada para su resguardo y demas fines.

Dado en la Ciudad de los Angeles en esto papel comun por
22 no haber sellado, á los nueve dias del mes de Mayo de mil ochocientos cuarento y seis. PIO PICO.

JOSE MATIAS MORENO, *Srio.*

Queda tomado razon de este Superior despacho en el libro respectivo. MORENO.

Filed in office October 14, 1852.

GEO. FISHER, *Sec'y.*

23 *Document H. H., No. 2, annexed to the deposition of Santiago Arguello.*

Pio Pico, Gobernador Constitucional del Departamento de las Californias:

{ Gobierno del depto. de Californias. } La Exma. Asamblea Departamental en Sesion del dia tres de Junio ha tenido á bien descretar lo siguiente:

"Se aprueba la concession hecha á Doña Rosaria Estudillo de Aguirre del terreno que resulta sobrante en los Ranchos de San Jacinto Viejo y Nuevo jurisdiccion de San Diego segun titulo librado conf'ha. 2 de Mayo del presente año con arreglo a la ley de 18 de Agosto de 1824, y al arto. 5o. del reglamento de 21 de Noviembre de 1828."

Y para resguardo de la parte de Doña Rosario Estudillo de Aguirre lo hago asi saber, Dado en la Ciudad de los Angeles en este papel comun por falta de sellado a seis de Junio de mil ochocientos cuarenta y seis. PIO PICO.

JOSE MATIAS MORENO, *Srio. Into.*

Filed in office Oct. 14, 1852.

GEO. FISHFR, *Sec'y.*

Opinion.

24 JOSE ANTONIO AGUIRRE, in right of his wife, *vs.* THE UNITED STATES. } For the sobrante of the Rancho of San Jacinto Viejo y Nuevo, in San Diego county, containing five square leagues of land.

This claim although filed by her husband, is in fact an application for a confirmation in favor of Maria del Rosario Estudillo de Aguirre, who is represented to be the grantee, and who claims the property

in her own right. The petition sets out fully *that* the right of the wife and the representative character of the husband in presenting the claim, and must be regarded as the petititon of the former presented by the husband, acting as her attorney in fact.

In proof of her right to the land an original grant is given in evidence duly proved, made to her by Gov. Pio Pico, bearing date May 9th, 1846, and a certificate of the approval of the departmental assembly, which is dated June 6th, 1846. No copy of the espediente is filed in the case.

The land granted is described in the title papers as the overplus (sobrante) resulting from the rancho of Old and New San Jacinto, and reference for it is made to the general map of both ranchos attached to their espedientes. Juridical possession and the establishment of her boundaries are required by the conditions of the grant, of the grantee, the survey to be commenced from the boundaries of Don Jose Anto. Estudillo and of Don Miguel de Pedrorena, and the number of square leagues contained in the premises is re-
25 quired to be returned, by the officer making the measurement, to the government.

The grantee is also required, as a condition of her title, to occupy the premises with an inhabited house and movable property, so as to avoid its denouncement. No proof of such occupancy is given.

If this case were to be adjudicated on the papers and proofs given in evidence in it by the claimant, no difficulty could arise in deciding it. There is nothing to show what land is claimed. The number of acres or leagues is not specified, and no boundaries or monuments are given, and no map is presented; nor is there any other testimony to show what in fact is the land claimed by her; nor is it shown in the proofs that she has ever occupied or claimed under the grant any specified portion of land with defined limits or boundaries.

The premises conceded to her are represented as being a portion of a larger tract of land out of which the previous grants of the lands, known as the Old and New San Jacinto, are first to be satisfied, and the remainder to belong to her; and in her grant the maps which constitute a part of the record in the proceedings to obtain these grants are referred to for a more definite description of the premises.

These maps and the proceedings in the other cases are most obviously necessary parts of the proofs in this case, but none of them are presented in it. We are left, on the evidence introduced by the claimant, with no description of the location, extent, boundaries, or monuments of the large tracts out of which the two grants of
26 Old and New San Jacinto are to be satisfied, and within which the grant of the present claimant is to be located by appropriating the overplus land. There is presented, then, neither a description of the specified portion of the land claimed by the petitioner, nor of the larger tract, within the limits of which it is located.

As, however, reference is made in the grant here presented to the two prior grants, and as the documents connected with the same are indispensable to a correct understanding of this case. I have examined the papers filed with the commission by the claimants under the two grants above mentioned.

The first, that of San Jacinto, subsequently called Old San Jacinto, was granted to Jose Antonio Estudillo on the 21st November, 1842. (Case No. 115.) This is a grant of the land known as San Jacinto, according to the limits shown in the map accompanying the espediente. It is a grant of eight leagues of land, which is to be located within the limits prescribed on the map by judicial measurement, the overplus to remain the property of the nation. This map is indefinite and unsatisfactory in its character; but it is shown, by the proper documentary evidence thereof, that judicial possession was given under the grant on the 26th March, 1843, for the purpose of assigning the proper quantity of land to the grantee, and establishing its boundaries and landmarks.

The second grant, that of New San Jacinto, (case No. 263,) was made to Manuel de Pedrorena Jan'y 14th, 1846. By the documents filed in that case, it appears that the land covered by that grant was also the overplus, or sobrante, of the prior grant of Old San Jacinto, and covered all the land described in the grant to Estudillo
27 not included within the eight leagues which where granted to him. When the application for the grant to Pedrorena was made, the judicial survey under the grant to Estudillo had been made, and his portion of the land was by it defined and segregated, and we must presume that the object of the law had been accomplished by placing the monuments which were designated to exhibit on the land the lines and angles specified in the record testimony of the measurement which was required to be filed among the public archives. At the time of the grant to Pedrorena then, the sobrante of the grant to Estudillo had been ascertained, and the application of Pedrorena was for that land as a specific quantity of the national domain already segregated, and he solicited it as a grant of land by metes and bounds, and presented a map as a part of his petition, for the purpose of showing and defining the limits of the premises.

The commission have already adjudicated this claim, and have rejected it on the ground of indefinitiveness of description and want of boundaries; neither the written description contained in the documents, nor the map, affording the means of designating and surveying the premises.

I recur to the grant which is the basis of the claim now under consideration. It is a grant of the overplus land (sobrante) of the ranchos of Old and New San Jacinto.

The question of sobrante in connection with the grant of Old San Jacinto was put to rest by the juridical measurement of the lands under the grant in March, 1843, by which the lands were seg-
28 regated and defined, and the surplus restored to the disposition of the government.

In the lands thus segregated the right of Estudillo became perfected and exclusive, and nothing remained therein which the government could grant. The present claimant shows no interest in this portion of the premises mentioned.

The grant to Pedrorena, if a valid grant for anything, covered all the land which resulted as a sobrante from the measurement under

Estudillo's grant. This we have already seen is a grant by metes and bounds, referring to a map for description containing no provision for a sobrante, and specifying no number of square leagues for quantity, but embracing all the land excluded by the juridical measurement under the grant to Estudillo.

Under any aspect of this lease I am unable to perceive how the claimant can receive a confirmation. Her grant covers the overplus of the two grants above mentioned, when it is certain that there could be no such overplus by any possibility.

But it may be asked whether, since the claim of Pedrorena, under his grant, has been rejected by this commission, and the land claimed under it has been virtually declared to be public land, her claim to it as the sobrante of Old San Jacinto does not become valid and entitle him to a confirmation.

There are fatal difficulties in the way of this result in the want of proof of the description and boundaries of the premises, if no other was present.

The testimony filed in her own case gives no description,
29 either by document or by oral proof, of the land, and she presents no map of the premises. If we regard the maps which are referred to in her grant, and which are filed in the two other cases before mentioned as evidence, still no aid is rendered. She would, the claim of said Pedrorena being out of the way, claim simply the land which [he] demanded, and her proof to sustain her right so far as the map and documentary evidence was concerned, would be the same on which he relied.

But the testimony has been already decided in his case to be insufficient to identify and designate the land claimed.

The same rule would apply to it when presented on her behalf, and for the same reason that his petition was denied by the commission, her's must also be rejected.

"Rejected."

Filed in office Jan'y 17, 1854.

GEO. FISHER, *Sec'y.*

30 *Decree.*

JOSE ANTONIO AGUIRRE, in right of his wife, *vs.* THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and the application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Jan'y 17, 1854.

32 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-one pages, numbered from 1 to 31, both exclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 116, on the docket of the said board, wherein Jose Antonio Aguirre is the claimant against the United States for the place known by the name of San Jacinto Viejo.

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[G. F.]

(Signed) GEORGE FISHER, *Sec'y.*

Filed September 20, 1854. W. H. CARTER, *Clerk.*

34 *Notice of appeal.*

In the matter of the application of Jose Antonio Aguirre, in right of his wife, Maria del Rosario Estudillo de Aguirre, for confirmation of the title to the rancho of Sobrante of San Jacinto Viejo y Nuevo, in the county of San Diego, and State of California:

In the United States district court for the southern district of California.

JOSE ANTONIO AGUIRRE, in right of his wife, MARIA DEL ROSARIO E. DE AGUIRRE.

SIR: Please take notice that the claimant in the above entitled cause appeals from the whole of the decision of the board of commissioners for ascertaining and settling private land claims in the State of California rejecting her claim to the title to the rancho of Sobrante of San Jacinto Viejo y Nuevo, in the county of San Diego, and State of California, said decision having been rendered by said board on the 17th of January, 1854.

Respectfully,

(Signed) THOS. W. SUTHERLAND,
Attorney of claimant.

To CHARLES E. CARR, Esq.,
Clerk of the U. S. district court for the southern district of California.

Filed December 13, 1854.

(Signed) C. E. CARR, *Clk.*

35 *Notice of intention to prosecute appeal.*

In the United States district court for the southern district of California.

ROSARIO ESTUDILLO DE AGUIRRE, by her husband, JOSE ANTONIO AGUIRRE, appellant, *vs.* THE UNITED STATES appellees.	No. 80. No. 80 on the docket of said court.

Appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California, taken on the 20th September, A. D. 1854, by the said board having filed with the clerk of the said court a certified transcript of their proceedings and decision of the papers and evidence upon which the same are founded in said cause, being No. 116 on the docket of said board.

Notice is hereby given that Rosario Estudillo de Aguirre, by her husband, Jose Antonio Aguirre, appellant in the above entitled cause, and claimant before the said board in a claim for a tract of land situated in the said southern district, and called the Sobrante de San Jacinto Viejo y Nuevo, filed before the said board on the 23d of March, 1852, being No. 116 on the docket of said board, will prosecute the appeal herein from the final decision of the said board entered on the 17th January, 1854, against and adverse to said claimant and appellant.

(Signed) J. LANCASTER BRENT,
Attorney for appellant.

Filed March 6, 1855.
(Signed) C. E. CARR, *Clk.*

Petition for review.

36 In the U. S. dist. court for the southern district of California

ROSARIO DE AGUIRRE, claimant, and JOSE ANTONIO AGUIRRE, her husband, appellants, *vs.* THE UNITED STATES, appellees.	No. 80.

To the Hon. Isaac J. K. Ogier, district judge of the United States within and for the southern district of California:

The petition of Maria de Rosario Estudillo de Aguirre and of Jose Antonio Aguirre, her husband, both residents of said State, respectfully showeth: That on the 9th May, 1846, Pio Pico, constitutional governor of the Californias, by virtue of authority in him vested by law, made, executed, and delivered to the said Maria de Rosario a

grant in fee of a tract of land situated in the said southern district and known as the sobrante of the Rancho of San Jacinto Viejo y Nuevo, bounded on the north by Jurupa and San Bernardino, on the south by Temecula, on the west by Guapa, and on the east by San Gorgonio. Your petitioner further represents, that said tract of land is more particularly described in a certain map of record in the archives of the government, referred to and made a part of said grant to be adduced in the court. Your petitioners further represent, that afterwards, to wit, on the 3d June, 1846, the said grant became definitely valid by the approbation of the departmental assembly.

Your petitioners further represent, that the said Rosario de Aguirre has fully complied with all the conditions of her said grant except the one concerning the judicial survey of the premises, which she was prevented from obtaining by the action of the Mexican government in declaring war against the United States; and they
37 further represent, that said judicial [survey] was not necessary, as the limits and extent of said granted premises had been accurately fixed and designated by actual survey and admeasurement, as appeared by the map forming a part of the grant as aforesaid.

Your petitioners further represent, that since the date of the grant the said Maria de Rosario has been and now is in peaceable possession of the granted premises.

Your petitioners further show, that on the 23d March, 1852, the said Maria de Rosario presented her petition, claiming the premises granted, before the land commissioners appointed in pursuance of an act of Congres entitled "An act to ascertain and settle the private land claims in the State of California," approved March 2d, 1851, while sitting as a board, together with the evidence in support thereof; and that afterwards, to wit, on the 17th January, 1854, the said board decided on the validity of the said claim and rejected it; and that afterwards, to wit, on the 20th September, 1854, an appeal was taken from the final decree of the said commissioners rejecting the said claim, by their having filed with the clerk of this hon. court a certified transcript of their proceedings and final decision, and of the papers and evidence upon which the same are founded; and that afterwards, to wit, on the 5th March, 1855, a notice of the intention of these petitioners to prosecute the said appeal was filed with the said clerk.

And your petitioners hereby make special reference to the said certified transcript, and pray that the same may be made a part of this petition. And your petitioners further aver, that the claim of said Maria de Rosario is valid by law and should be confirmed, and that the final decree of the commissioners, rejecting the said claim, is erroneous.

Wherefore petitioners pray that your honor may reverse said final decree and decide upon the validity of the claim of the said
38 Maria de Rosario, and declare the same to be valid and approve it, and for such further or general relief as the nature

of this case may require or law or equity grant. And as in duty bound, &c., &c.

(Signed) J. LANCASTER BRENT,
Att'y for pltffs.

Filed March 10th, 1855.

(Signed) C. E. CARR, *Clk.*

In the district court of the United States for the southern district of California.

LOS ANGELES, *Los Angeles county.*

ROSARIO DE AGUIRRE, claimant, and JOSE ANTONIO AGUIRRE, her husband, appellant, *vs.* THE UNITED STATES, appellees. } No. 80. (No. 116 of Transcript.)

Answer of the United States to the petition of appellant praying the court to review the decision of the U. S. land commissioners.

The petition of Pacificus Ord, attorney of the United States for the southern district of California, in behalf of the United States to the petition of Maria de Rosario Estudillo de Aguirre, and of Jose Antonio Aguirre, her husband, both residents of said State, filed March 10th, 1855, alleging that on the 23d March, 1852, the said Maria de Rosario presented her petition to the land commissioners, appointed in pursuance of an act of Congress entitled "an act to ascertain and settle the private land claims in the State of California," approved March 3d, 1851, while sitting as a board, claiming a tract of land situated in the said southern district, and known
39 as the sobrante of the ranchos of "San Jacinto y Nuevo," bounded on the northward by Jarupa and San Bernardino, on the south by Temecula, on the west by Guapo, and on the east by San Gorgonio, and more particularly described on a certain map of record in the archives of the government referred to, and made a part of the grant to be adduced in court. And that afterwards, to wit, on the 17th June, 1854, the said board decided on the validity of the said claim, and rejected it; and praying your honor to review said final decree, and to decide upon the validity of the claim of the said Maria de Rosario, and declare the same to be valid, and approve it, and for general relief.

And the said attorney, answering said petition in behalf of the United States, denies generally all and singular, each and singular, each and every allegation in the said petition contained; and he denies specially "that on the 9th May, 1846, Pio Pico, constitutional governor of the Californias, by virtue of authority in him vested by law, made, executed, and delivered to the said Maria de Rosario a grant in fee of a tract of land situated in the said southern district, and known as the sobrante of the ranchos of San Jacinto Viejo y Nuevo, bounded on the northward by Jarupa and San Bernardino, on the south by Temecula, on the west by Guapa, and on the east by San Gorgonio.

"That said tract is more particularly described in a certain map of record in the archives of the government referred to, and made a part of said grant to be adduced in the court. That afterwards, to wit, on the 3d June, 1846, the said grant became definitively valid by the approbation of the departmental assembly. That the said Rosario de Aguirre has fully complied with all the conditions of her said grant, except the one concerning the judicial survey of the premises, which she was prevented from obtaining by the action of the Mexican government in declaring war against the United States. That said judicial survey was not necessary, as the limits and extent of said granted premises had been accurately fixed and desig-
40 nated by actual survey and admeasurement. as appeared by the map forming a part of the grant as aforesaid. That since the date of the grant, the said Maria de Rosario has been, and now is, in peaceable possession of the said granted premises.

"That the claim of said Maria de Rosario is valid by law, and should be confirmed, and that the final decree of the commissioners respecting the said claim is erroneous," as alleged in said petition.

And the said attorney of the United States, in pursuance of the provisions of the said act of Congress, approved the 3d of March, 1851, herein fully sets forth the grounds on which the said claim is invalid, to wit:

1st. That the said alleged grant of Pio Pico, dated the 9th of May, 1846, was made in violation of the 4th article of the colonization law of Mexico of the 13th of August, A. D. 1824, in this: That the land granted, as alleged by claimant, was, and is, within ten leagues of the seacoast; and there is no evidence shown by said claimant that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California lying within ten leagues of the seacoast; and it is denied that the previous consent of said supreme general executive power of Mexico in such case was ever had.

II. That at the date of the said alleged grant the said land was occupied by, and in the possession of, the mission of Upper California, and particularly by the missions of San Gabriel, San Juan Capistrano, and San Luis Rey, and could not therefore be colonized.

III. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the said law of Mexico of the 18th of August, 1824, and the regulations for the colonization of the territories of Mexico of the date of the 21st of November, 1828.

41 IV. That the said alleged grant of land by Pio Pico, dated the 9th of May, 1846, to Maria del Rosario Estudillo de Aguirre, does not contain any description of the locality, extent, and boundaries of the land claimed by which it can be identified and surveyed; that the documents and maps referred to in the said alleged grant are not shown by the said claimant; that the said alleged documents and maps are an essential part of said alleged grant; and the said alleged grant is vague and indefinite, and void for uncertainty.

V. That the said alleged grant of said date is not executed upon

the lawful stamped paper; that said alleged grant was never approved by the departmental assembly of Cal'a and the supreme government of Mexico.

VI. That the document shown by said claimant, purporting to be the testimonial of the approbation of the departmental assembly of said alleged grant, dated June 6th, 1846, is not executed upon the lawful stamped paper.

VII. That the said claimant shows no definitively valid grant or title for the land claimed by her, and it is denied that she ever received a definitively valid grant or title for the said land.

VIII. That there is no evidence that the said claimant ever performed the conditions of the said alleged grant and the requirements of the law.

IX. That there is no evidence that the said claimant ever received or applied to the lawful authorities for the judicial possession of the land, alleged to have been granted her as aforesaid; and it is denied that she ever received or applied to the lawful authorities for the judicial possession of the land alleged to have been granted her by said Pio Pico.

42 X. That there is no evidence that the said claimant ever occupied the said land with an inhabited house and moveable property, within one year from the date of the said alleged grant, and that she cultivated the said land, as required by the conditions of the said alleged grant, and the law; and it is denied that she ever improved, occupied, and cultivated the said land as required by the conditions of the said alleged grant, and the law.

XI. That the said claimant fails to show in her said petition the extent or quantity of land claimed, or the county wherein the same is situated; and the said petition and claim is vague and indefinite.

Wherefore, the premises considered, the said attorney, respondent in behalf of the United States, prays that the said claimants may be served with copies of this answer; and that after due proceedings, this hon. court will decide the *the* said claim of said petitioners for said tract of land to be invalid, and to decree costs against them, and general relief.

(Signed) P. ORD, *(of Monterey county,)*
Attorney of the United States for the southern dist. of California.

Filed March 21st, 1855.
(Signed) C. E. CARR, *Cl'k.*

Application for order to take further testimony.

43 U. S. dist. court for the southern district of California.

JOSE ANTONIO AGUIRRE and ROSARIA, his wife, *vs.* THE UNITED STATES. } No. 80.

And now come plaintiffs and move the hon. court for an order to take further evidence in the above entitled cause.

(Signed) J. LANCASTER BRENT.

Filed April 9th, 1855.
(Signed) C. E. CARR, *Cl'k.*

Whereupon proceedings were had in open court, to wit:

U. S. district court, southern district of California.—Adjourned term, 9th April, 1855.

LOS ANGELES, *April* 9, 1855.

JOSE ANTONIO AGUIRRE and wife
vs.
THE UNITED STATES. } No. 80.

And now come the plaintiff by their attorney, J. L. Brent, and move the court for an order to take further testimony.

Whereupon it was ordered by the court that leave be granted the said plaintiff to take further testimony in this case in accor-
44 dance with the rules of this court.

Notice of hearing by U. S. att'y.

In the district court of the United States for the southern district of California.

J. A. AGUIRRE and wife
vs.
THE UNITED STATES. } No. 80. Transcript, No. 116.

To J. A. Aguirre and wife, or their attorneys:

Take notice, that the above entitled cause will be brought to hearing by the United States on the 19th day of October, A. D. 1855, or as soon thereafter as the same can be heard by the court.

Los Angeles, Oct. 11th, 1855.
(Signed) P. ORD,
U. S. dist. att'y.

Filed Oct. 11th, 1855.
(Signed) C. E. CARR, *Cl'k.*

Whereupon the following proceedings were had in open court, to wit:

U. S. dist. court, south'n dist. Cal.—Special term.

LOS ANGELES, *Oct.* 19, 1855.

J. A. AGUIRRE and wife
vs.
THE UNITED STATES. } No. 80.

And now comes the U. S. dist. att'y, and moves the court to receive as submitted, and for final adjudication before this court, case

No. 80 on the docket, in which said case notice of hearing has been duly given by him under the rules of this court; and the matters and things arising under said motion having been heard, and by the court here fully understood,

It is ordered, that said motion be overruled.

45 Año de 1846.

Jurisdicion del Partedo S. Diego.

Espediente promovido pr. el Sor. Don Miguel de Pedrorena en solicitud del parage de San Jacinto Nuevo. (495.)

{ Gov't } { Seal. }

ANGELES, *Dic'bre* 27 *de* 1845
Pase al Sor. Sub Prefecto de Sn. Diego a fin de ql. la parte de Dn. Jose Antonio Estudillo informe circunstanciadvenente sobre lo contenido en este instancia.
PICO.

EXMO. SOR. GOBERNADOR: Miguel de Pedrorena comerciante y establecido en este Departamento bastanle años, anto V. E. con el debido respecto comparecio y digo ql. satisfechocomo lo estoy y sera probado se necesario fuere, do ql. en el rancho de San Jacinto resulta terreno sobrante al que le fue adjudicado al Señor Dn. Jose Antonio Estudillo pues comprende mayor numero de sitios que los que el Superior Gobierno le concedió: ruego A. V. E. que tomando en consideracion lo necesidad que tengo de un parage en donde poder ingresar algunos bienes de campo ql. he adqui-
46 rido en mayor numero y estan espuetos a pederse por falta de lugar en donde se multiplican, que se digne concederme en propriedad conforme a la ley de 18 de Agosto de 1824 todo lo que resulta sobranto del referido San Jacinto segun y como manifiesta en todos suspartes incluyendo el potrero el diseño que debidamente acompaño en la inteligencia que de ella no resulta perjuicio de tierra y á mi me hara V. E. un beneficio que reconceré y ql. será tambien en provecho del mismo Departamento ql. necesita tanto de ql. sus tierras se an ocupados por proprietarios ql. siemper procuran su utiles al Gobierno Suplico a V. E. egualmente ql. se sucidiera segun espresada su generosidad ql. se acceda á mi solicitud sea estendido el titulo baja la denominacion de San Jacinto nuevo, en todo de lo que, reciberé gracia Juro, &c., &c., dispensado el uso del papel comum por falta del sellado ql. no lo hay.

Angeles, Diciembre 26 de 1845.

MIGUEL DE PEDRORENA.

EXMO SENOR: Atento al superior decreto marginal de V. E. de 27 de Diciembre ultimo puesto en la antecedente solicitud y en la ql. se pretende el sobrante ql. resulta en las mediciones del parage de S. Jacinto, espondré ql. presente D. Jose A. Estudillo como dueño del parage mencionado y hecho cargo de la presente solicitud responde ql. nada tiene ql. objetar siendo terreno sobrante del ql. tiene concedido, pr. lo ql. resulta no presentarse inconveniente á la concesion de

este parage, con inclucion del potrero de S. Jacinto pr. ser terreno valdio ql. occupavan tambien aquellos bienes. En este con-
47 cepto resulta que el terreno solicitado es valdio *es valdio* y purde accedirse á esta solicitud. Sin Embargo de lo es puesto V. E. con mejor acierto resolverá lo ql. fuere de su superior agrado.

S. ARONELLO.

S. Diego, Enero 2 de 1846.

[SEAL.] ANGELES, *Enero* 14 *de* 1846.

Vista la solicitud con ql. da principio esta espediente, el informe del Prefecto de Sn. Diego con lo demas que se tubo presente y ver convino de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, declaro á Dn. Miguel de Pedrorena diseño en propriedad del terreno nombrado Sn. Jacinto el Nuevo y Potrer de Sn. Jacinto conforme demuestra el diseño que obra en este espediente. Librese al agraciado el titulo respectivo y reservase el espediente para someterlo á la approbacion de la E. Asamblea.

Pio Pico, Gobernador Provicional de las Californias asi lo mande decreto, y firme de que doy fé.

PIO PICO.

JOSE MA. COVARRUBIAS, *Srio.*

[For maps see original, pages 48 and 49]

50 Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provisional de los Californias.

Por cuanto Dn. Miguel de Pedrorena ha pretendido para su beneficio personal y el de su familia, el terreno nombrado Sn. Jacinto Nuevo con inclusion del Potrero del mismo nombre, practicadas previamente las avenguaciones concernientes, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido por decreto de estia dia en concederle el espresado terreno y Potrero, declarandole la propriedad de el por las presentes letras de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre de 1828 a reserva de la aprobacion de la Exma. Asamblea Departamental y bajo las condiciones siguientes:

1a. Podrar cucarlo sin perjudicar las travesias caminos y suvidumbres, lo disfrutará libre y esclusivamente pero lo tendra ocupada con casa habitada y bienes semovientes a fin de evitar el denuncio.

2a. Solicitara del Juez respectivo le de la posecion Judicial en virtud de esta despacho, por el cual se demarcaran los linderos con las majoneras necesarios.

3a. El terreno de que se hace donacion con inclusion del Potrero de San Jacinto es el que demuestra el diseno que corre en el espediente. El Juez que diere la posecion lo hara medir conforme a ordenanza, empezando las mediciones desde los linderos de Dn. Jose Antonio Estudillo y dará aviso á este Gobierno del numero de sitios de ganado mayor que contiene.

En consecuencia mando que tiendose el presente titulo por firme y valedero se tomo razon de el en el libro á que corresponde y se en-

tregar al interesado para su resquardo y demas fines. Dado en la Ciudad de Los Angeles en esta papel comun pa no haba del
51 sellado á catorce de Enero de mil ochocientos cuarenta y seis.
Queda tomada de esta Superior despacho en el libro respectivo.

ANGELES, *Mayo* 8, *de* 1846.

Dado cuenta en sesion de hoy con este espediente á la E. A. D. se mando pasar á la comision de terrenos valdios.

PIO PICO, *Presd'to.*
AGUSTIN OLVERA, *D. S.*

SEÑOR: La Comision de terrenos valdios en cargada de examinar el presente espediente promovido pr. D. Miguel Pedrorena el parage conocido con el nombre de San Jacinto nuevo con inclusion de su potrero en la jurisdiccion de S. Diego ql. le fue concedido pr. el Supr. Gobo. Depart'l para su beneficio y el de su familia, con arreglo á las leyes de la materia, en este concepto, pone á la deliberacion de V. E. la proposicion siguiente.

Se aprueba lo concesion hecha á D. Miguel de Pedrorena casado con Mejicana del parage conocido con el nombre S. Jacinto Nuevo, con enclusion de su potrero en estencion de lo ql. señala el diseno ql. corre agregado el Espdte. segun titulo librado con fha. 14 de Enero del presento ano sue ql. exceda del maximum senalada pr. la ley de confirmedad con la de 18 de Agto. de 1824 y Art. 5, del reglamento de 21 de Noviembre de 1828.

Sala de Coms. en la Ciudad de Los Angeles, Julio 4 de 1846.

S. ARONELLO.

52 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the eleven preceding and hereunto annexed pages of tracing paper, numbered from 1 to eleven inclusive, exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San
[SEAL.] Francisco, this nineteenth day of October, 1855.

(Signed) JOHN C. HAYS,
U. S. surveyor general for California.

Filed Dec. 20th, 1855.

(S'gd) C. E. CARR, *Cl'k.*

54 *Translation of traced copy of espediente.*—(Title page.)

Year 1846.

Jurisdicion of the District of San Diego.

Espediente advanced by the Señor Don Miguel de Pedrorena, petitioning for the tract of San Jacinto Nuevo. (495.)

[SEAL.] *Petition and order of reference.*

ANGELES, *Dec.* 27, 1845. Forward to the sub-prefect of S. Diego, to the end that, hearing the part of Don Jose Estudillo, he may advise minutely concerning the contents of this petition.

PICO.

MOST EXCELLENT SENOR GOBERNOR: I, Miguel de Pedrorena, trader, and established in this department for several years, before your excellency, with due respect, present myself, and say:

That satisfied as I am, and it shall be proved if necessary, that in the rancho of San Jacinto there remains land in surplus to that which was adjudged to Don Jose Estudillo, inasmuch as it contains a greater number of square leagues than those which the superior government grants to him, I pray your excellency that, taking into consideration the need which I have of a tract of land whereon to be able to place certain property in live stock, which I have acquired in considerable number, and which is exposed to loss for want of room in which to multiply, you will see fit to grant me in fee, in conformity to the law of 18th
55 of *of* August, 1824, all that remains in surplus of the aforesaid rancho of San Jacinto, according to, and as the map shows, which I duly present herewith in all its parts, including the Potrero, in the full understanding that no prejudice to any third party results therefrom; and on me your excellency will confer a favor, which I shall acknowledge, and which also be to thea dvantage of the department itself, which stands in such need of having its lands occupied by proprietors who will always seek to be useful to the government.

I also pray your excellency that, if it shall happen, as from your generosity I am led to expect, and if my petition shall be assented to, the title may be issued under the name of San Jacinto Nuevo, in all of which I shall receive favor. I make oath, etc., excusing the use of common paper for the want of stamped, of which there is none.

MIGUEL DE PEDRORENA.

ANGELES, *December 26th*, 1845.

Report of sub-prefect.

MOST EXCELLENT SIR: In obedience to the superior marginal decree of your excellency of the 27th of December last, entered upon the foregoing petition, in which petition the surplus which results in the measurement of the tract of San Jacinto is prayed for, I will explain: that

Don Jose A. Estudillo, being present as owner of the aforesaid tract, and having been made acquainted with the present petition, he answers that he has no objection to make, the land being surplus to that which he holds granted to him, therefore it follows that no obstacle presents itself to the concession of this tract, including the Potrero of San Jacinto, it being vacant land, and which also that stock will fill. In this view, it follows that the land petitioned for is vacant and this petition can be acceded to; nevertheless, your excellency can, with greater prudence, resolve what may be of your superior pleasure.

S. ARGUELLO.

SAN DIEGO, *January* 2*d*, 1846.

Decree of grant.

56 ANGELES, *January* 14*th*, 1846.

[SEAL.] Having seen the petition with which the espediente commences, the report of the prefect of San Diego, with the rest which was borne in mind, and which it was proper to keep in view in conformity with the law of the 18th of August, 1824, and the regulation of the 21st of November, 1828, I declare Don Miguel Pedrorena owner in fee of the tract of land called San Jacinto el Nuevo y Potrero de San Jacinto, according as the map shows, which is a part of this espediente.

Let the proper title issue to the grantee, and let the espediente be retained in order to submit it to the approbation of the excellent assembly.

I, Pio Pico, provisional governor of the Californias, so ordered, decreed, and signed, which I attest.

PIO PICO.

JOSE MA. COVARRUBIAS, *Sec'y.*

A map of the Potrero of San Jacinto.

A map of the Rancho of San Jacinto, including the land of Jose A. Estudillo, and the new, which Miguel Pedrorena solicits, the Potrero of the same name being added. Signed by Jasper O. Farrel, surveyor.

Title.

57 Pio Pico, senior member of the departmental assembly and provisional governor of the Californias:

Inasmuch as Don Miguel de Pedrorena has applied, for his personal benefit and that of his family, for the tract of land called San Jacinto Nuevo, including the Potrero of the same name, the proper investigations having first been made, using the powers which are conferred on me in the name of the Mexican nation, I have come, by decree of this day, to grant him the aforesaid lands and Potrero, de-

claring to him the ownership thereof by these presents, in conformity with the law of the 18th of August, 1824, and the regulation of the 21st of November, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, highways, and rights of way, he may enjoy it freely and exclusively, but he shall hold it in occupation with an inhabited house and stock, to the end of avoiding denouncement.

2d. He shall petition the proper judge to give him the judicial possession by virtue of this instrument, by whom the boundaries shall be marked out with the necessary land marks.

3d. The tract of which donation is made, including the Potrero of San Jacinto, is that which the map which forms a part of the espediente shows. The judge giving possession shall cause it to be measured according to ordinance, commencing the measurement from the boundaries of Don Jcse Antonio Estudillo, and shall inform this government of the number of square leagues which it contains.

58 Therefore I order that, the present title being held for firm and valid, record thereof be made in the book to which it belongs, and that it be delivered to the interested party for his security and the other ends.

Given in the city of Los Angeles on this common paper, there being none of the stamped, on the fourteenth of January, one thousand eight hundred and forty-six.

Record made of this superior despatch in the proper book.

Reference to committee.

ANGELES, *May 8th*, 1846.

In this session of to-day this espediente having been presented to the excellent departmental assembly, it was ordered to be passed to the committee on vacant lands.

PIO PICO, *Pres't.*

AGUSTIN OLVERA, *Sec'ry.*

Report of committee.

SIR: The committee on vacant lands, charged with the examination of the present espediente advanced by Don Miguel de Pedrorena of the tract of land known by the name of San Jacinto Nuevo, including its Potrero in the jurisdiction of San Diego, which was granted him by the superior departmental government for his benefit and that of his family, conformably to the laws of the matter, in this opinion presents to the deliberation of your excellency the following proposition:

59 The grant is approved made to Don Miguel Pedrorena, married to a Mexican woman, of the tract known by the name of San Jacinto Nuevo, including its Potrero to the extent of what the map shows, which is annexed to the espediente, according to the

title issued of date of January 14th of the present year; provided the same does not exceed the maximum prescribed by law, according to the law of 18th August, 1824, and article 5 of the regulation of 21st of November, 1828.

COMMITTEE ROOM IN THE CITY OF LOS ANGELES,
July 4th, 1846.

S. ARGUELLO.

Filed Dec. 20th, 1855.

(Signed) C. E. CARR, *Clk.*

60 *Translation of testimonial of approval.*

In the U. S. district court for the southern district of California.

JOSE ANTONIO AGUIRRE, appellant,
vs.
THE UNITED STATES, appellees

Case, No. 80.
Transcript, No. 116.
"Sobrante de San Jacinto Nuevo y Viejo."

Translation of testimonial of approval of departmental assembly, see transcript, page 22, "H. H., No. 2."

Pio Pico, constitutional governor of the department of the Californias:

[SEAL.] The most excellent departmental assembly in session of the third day of June has seen fit to decree the following:

"The concession is approved made to Doña Rosario Estudillo de Aguirre of the tract of land which remains as surplus in the ranchos of San Jacinto Viejo y Nueva, jurisdiction of San Diego, according to the title issued, with date 2d of May of the present year, in conformity with the law of 18th of August, 1824, and article 5th of the regulation of 21st November, 1828."

And for the security of the party, Doña Rosario Estudillo de Aguirre, I so certify.

Given at the city of Los Angeles, on this common paper for want of stamped, on the 6th of June, A. D. 1846.

PIO PICO.

JOSE MATIAS MORENO, *Secretary ad interim.*

Filed Dec. 20th, 1855.

(Signed) C. E. CARR, *Clk.*

61 Whereupon the following proceedings were had in open court, to wit:

U. S. dist. court, southn. dist. of Cala.—December term, 1855.

DECEMBER 20th, 1855.

J. A. AGUIRRE and wife, appellants,
vs.
THE UNITED STATES, appellees.
No. 80.

This case was called, and a traced copy of the espediente from the surveyor general's office, translation of the same, and a translation of

the testimonial of approval were filed by counsel for appellant, upon which (the case having been argued by counsel for the respective parties) and upon the transcript and papers on file in the case, it was submitted to the court for final adjudication.

DECEMBER 24th, 1855.

J. A. AGUIRRE and wife, appellants,
vs.
THE UNITED STATES, appellees.
} No. 80.

In this case the opinion of the court was delivered, confirming the claim of the appellants herein, and a decree in accordance therewith, was ordered to be entered upon the record of decrees.

62 *Decree.*

In the United States district court in and for the southern district of California.

MARIA DEL ROSARIO DE AGUIRRE, appellant,
vs.
THE UNITED STATES, appellees,
} Case No. 80. "Sobrante de San Jacinto Viejo y Nuevo."

This cause coming on to be heard on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on a transcript of the proceedings and decision of said board, and of the papers and evidence upon which said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard.

It is ordered, adjudged, and decreed, that the said decision of said board be, and the same hereby is, reversed; and it further adjudged and decreed that the claim of the above named appellant is good and valid, and that the same be confirmed to her as follows, to wit:

The lands hereby confirmed are the "sobrante," or surplus remaining within the boundaries of the tract of land called San Jacinto as the same are represented and described in the map of said tract contained in the espediente of Miguel Pedrorena filed in this case and referred to in the grant, over and above certain lands granted to Jose Antonio Estudillo, and certain other lands granted to Miguel Pedrorena, within the aforesaid boundaries, to the extent of eleven square leagues of land, and if the said sobrante, or surplus, within said boundaries should be less than eleven square leagues, then confirmation is hereby made of such less quantity.

(Signed) ISAAC S. K. OGIER,
U. S. dist. judge.

Filed Feb. 14, 1856.

(Signed) C. E. CARR, *Clk.*

63 It the district court of the United States for the southern district of California.

LOS ANGELES, *December term*, 1855.

J. A. AGUIRRE and wife, appellees, } No. 80.
vs. } (No. 116 of transcript.)
THE UNITED STATES, appellant.

On appeal from the United States land commission.

On motion of P. Ord, attorney of the United States for the southern district of California, it is hereby

Ordered by the court, that an appeal be granted the United States to the Supreme Court of the United States from the judgment of this court against the said United States in the above entitled cause, rendered on or about the 24th day of December, A. D. 1855.

(Signed) P. ORD, *Dist. att'y.*

Filed March 7th, 1856.

(Signed) C. E. CARR, *Cl'k.*
By O. MORGAN, *Dep'ty.*

64 United States district court, southern district of California.

CLERK'S OFFICE, *Los Angeles.*

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing sixty-three pages, numbered from 1 to 63, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and the papers and evidence on which said decision was founded, on file in my office in case number 80 on the docket of said court, wherein Jose Antonio Aguirre and wife are the claimants against the United States for the place called "San Jacinto Viejo."

In testimony whereof I have hereunto set my hand and affixed the [SEAL] seal of said court, at the city of Los Angeles, this 23d day of December, A. D. 1861.

JOHN O. WHEELER, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

No. 124.

December term, 1863.—Appeal from the southern district of California.

THE UNITED STATES, appellants,
vs.
JOSÉ ANTONIO AGUIRRE and WIFE, appellees.

STATEMENT OF FACTS AND ARGUMENT FOR THE UNITED STATES.

The facts of this case are necessarily connected with the history of *two other* ranchos. The first one was *originally* known as "San Jacinto," but subsequently has been known as "*Old* San Jacinto." The second one is known as "*New* San Jacinto and the Potrero of San Jacinto," being a grant of the *sobrante* or *surplus* within the limits of the Old San Jacinto ranch, with the addition of the Potrero, not *exceeding eleven leagues.*

The claim in the present case is for the "sobrante," or surplus, over and above the quantity contained *in both* the preceding grants, within the limits of the original tract, known as "San Jacinto," and delineated on the map referred to in those cases. It therefore has the peculiarity of being a grant for *the surplus* of *a surplus*, an *apparent contradiction*, depending, however, entirely on the fact, whether within the boundaries of the whole tract there is still an *excess* byond satisfying the *allowable* limits of the two previous grants.

This general statement will be rendered more exact by a reference to the facts as disclosed by the record.

November 21, 1842—*Old San Jacinto* was granted to Estudillo.

March 26, 1843.—Judicial possession given, and the limits of the grant (8 leagues) defined. About the validity of this grant there can be no question, as it is No. 319, of Jimeno's Index, p. 11; see also Printed Record, p. 12; (21 Howard's R., 176.)

First sobrante.

December 26, 1845.—Petition for surplus in Old San Jacinto, by Pedrorena.

December 27, 1845.—Petition referred to sub-prefect for information.

January 2, 1846.—Report. No objection to the grant.

January 14, 1846.—Grant of Pio Pico, and title ordered.

Same day.—Title issued for the tract of land called New San Jacinto and the Potrero.

May 8, 1846.—The foregoing expediente referred, by the departmental assembly, to the committee on vacant lands.

July 4, 1846.—Report of committee approving of the grant, "*provided that the grant does not exceed the maximum allowed by law.*"

This was evidently added for the sake of greater caution, and was only an expression in words of what the law had ordained, viz: that no colonization grant could exceed eleven leagues.

Second sobrante.

January 19, 1846.—Petition for the sobrante in the rancho San Jacinto, the extent of which is estimated at about 5 leagues by Aguirre.

February 19, 1846.—Petition of claimant referred to the sub-prefect. Report thereon, "*the land petitioned for is that remaining vacant* from *the land of the Old and New San Jacinto ranches.*" No objection to the grant.

May 9, 1846.—Petition granted by Pio Pico, and title ordered.

Same day.—Title issued for the surplus in the ranches of Old and New San Jacinto. Surveys to commence from their boundaries.

May 8, 1846.—Departmental assembly referred expediente to committee on vacant lands.

May 28, 1846.—Report of committee favorable to grant.

June 3, 1846.—Grant approved by departmental assembly, as appears not only by the record, but by the journal of the assembly found in the archives of the surveyor general's office.—(See the same printed as an appendix to appellant's brief in U. S. *vs.* Bolton, p. 244.)

June 6, 1846.—Certificate of approval, embodying the resolution of the departmental assembly.—(Printed Record, p. 27.)

By a comparison of the dates of the respective approvals of these grants by the committee on vacant lands, it will be observed that the grant for the *second* sobrante was recommended for approval May 28, and approved by the departmental assembly June 3, 1846; whereas that for the *first* sobrante was not reported favorably until July 4, 1846, and with the instruction that the grant should not exceed the maximum allowed by law, viz: eleven leagues. Having reported the *second first*, and approved it, it became *necessary*, in order to make room for the grant of the *second* sobrante, to limit the *first* to the maximum quantity. This consideration explains the discrepancy.

To the grant, which is the foundation of the claim in this case, several objections may be made.

I. *There are two instances of confusion and contradiction of dates.* 1st. The governor's approval of the prefect's report, and the concession thereupon, dated *May* 9, 1846. The *title* also bears the same date, May 9, 1846; whereas it appears that, May 8, 1846, the expediente and grant were referred to the departmental assembly, that is, that a *subsequent* event occurred *before* a *prior* one.

2d. In the report of the committee on vacant lands, dated May 28,

1846, the title is spoken of as having been approved of on this 2d of May, 1846.

In the certificate of approval, the decree of the departmental assembly is stated as follows, viz: "The concession is approved," &c., "according to the title issued with date of 2d May of the present year," &c.

These are no doubt discrepancies, but as there was no other grant made to the same person at or about the same time for land in that particular locality, it is evident that these various dates all refer to the same transactions, and that the errors are merely *clerical.*

II. *The claim is not legally proved.* The official witnesses (the governor and secretary) were not called as witnesses to authenticate the grant; *nor was any legal foundation laid for substituting the secondary evidence of handwriting for the primary evidence of authenticity.* This objection is no doubt well taken; and if there was any well-founded suspicion of the genuineness of this grant, advantage should be taken of *this matter of form;* but inasmuch as the grant has passed through all the ordinary steps prescribed by the colonization law—petition, reference, report, concession, grant, approval by the departmental assembly, and all these facts are attested by an *expediente* certified from the archives of the surveyor general's office, and also by the journal of the departmental assembly for 1846, also found among those archives, and there can be no rational doubt of the genuineness of the grant. This defect in point of form may be very well *waived by the government,* as the only effect of insisting upon it would be to put the party to the expense and delay of proving facts, of which there is now no reasonable doubt.

III. That the boundaries of the grant are vague and indefinite. This is the chief ground, and the only tenable ground on which the claim was rejected by the board of land commissioners. They applied to it the old and strict doctrine of *segregation,* by fixed and definite boundaries. But the doctrines on that subject subsequently established by the Supreme Court of the United States in the case of United States *vs.* Frémont (17 Howard's R., 558, &c) relieve this case from all difficulties on that score.

The petition is "for five (5) leagues [of land,] more or less, within the limits of the known rancho of San Jacinto, the general plat of which is in the office of the secretary of state, and shown in its total extent that it is bounded thus: *north* by the ranchos Jumpa and San Bernardino; *south* by Temecula; *west* by Unapia, and *east* by Gorgonia."—(Printed Record, p. 7.) This is rendered still more specific by the report of the sub-perfect: "The land petitioned for by D. José A. Aguirre, in the name of his wife, is that remaining vacant from the land of the Old and New San Jacinto, and which is bounded by the land mentioned by the petition, and the copy of the plat, which I have under my eyes, proves to be correct with the original which exists in the government."—(*Ib.*, p. 7.)

A copy of this map is attached to the record, and there can be no difficulty in locating the lands and defining their boundaries. The out-boundaries of the adjoining ranches being given, and the

boundaries of the Old and New Jacinto ranchos fixed and determined, the *residuum* is necessarily the *subject* of this grant.

IV. The petition asks for *five* leagues of land, more or less; and *the decree of confirmation by the district court of the United States is for any quantity not exceeding eleven square leagues.*—(Printed Record, p. 28.)

In the Fossat case (20 Howard's U. S. R., 413) the Supreme Court of the United States decided that where there is no natural boundary or descriptive call for the termination of lines of a tract of land, and the quantity called for in the grant is "one league of the larger size, *a little more or less*," the survey must include *only a league.* The words "*a little more or less must be rejected.*"

It also decided, in the case of Yontz *vs.* The United States, (23 Howard's R., 495,) that the generality of the grant may be sustained by the words of the petition; that the petition and the concession must be taken as *one act*, and the extent of the grant limited by the prayer of the petition.—(*Ib.*, 498.) In that case the grant was limited to the *two leagues* prayed for in the petition.

The same principles should be applied in this case. The petitioner ought to have what he asked for, if so much is to be found within the locality of the grant, but no more.

If the appellee is willing to have the grant restricted to any quantity not exceeding five leagues, and no more; if more should be found in the locality of the grant, a decree of confirmation may be entered to that effect without further litigation; but if not, we insist that the decree of confirmation by the court below shall be reversed, and the case remanded, for the reasons already given.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.